

GEORGE JALBERT ET AL.

IBLA 77-471

Decided February 2, 1979

Appeal from decision of the Medford, Oregon, District Manager, Bureau of Land Management, to offer timber tract for sale. 77-54.

Affirmed.

1. Rules of Practice: Appeals: Standing to Appeal—Rules of Practice: Protests

A group of individual landowners, whose lands assertedly abut a Federal tract which is offered for timber sale, have standing to appeal from a decision dismissing their protest against the proposed sale.

2. Federal Land Policy and Management Act of 1976: Generally—Timber Sales and Disposals

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(h), providing for sustained yield management of timber resources, and 16 U.S.C. §§ 594, 594-1 (1970), which direct a policy of preserving forest resources from insect infestation and damage, envisage that the Department is under an obligation to protect timber from such ravages, including without limitation, the sale of timber so affected.

3. Timber Sales and Disposals

A decision by a district office to proceed with a proposed timber sale, which was made after consideration of all relevant facts, and which decision is supported by the record, will not be disturbed in the absence of a showing that the decision is clearly in error.

4. National Environmental Policy Act of 1969: Environmental Statements—Timber Sales and Disposals

Where a proposed Federal timber sale would allow the cutting of trees on a 162-acre tract pursuant to a properly promulgated decision of the Director of the Bureau of Land Management concerning the allowable cut in that district, such sale does not, by itself, constitute a major Federal action significantly affecting the quality of the human environment such as will require the preparation of an environmental impact statement prior to the sale.

APPEARANCES: George Jalbert, pro se, and for other appellants; Donald P. Lawton, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Government.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

George Jalbert and other named individuals, 1/ appeal from the dismissal of their protest against the decision of the Bureau of Land Management (BLM), Medford, Oregon, District Manager to offer the Malone Peak timber tract No. 77-54 for sale on July 28, 1977. 2/ This 162-acre tract has been advertised but, due to the pendency of this appeal (see 43 CFR 4.21), no bids have been accepted by BLM.

In their statement of reasons, filed with this Board, September 29, 1977, appellants argue variously that the proposed sale violates the principles of sustained yield timber management, that it will be undertaken without proper regard for the protection of watershed areas, that it will cause conditions of economic instability in local communities, and that the sale should not proceed until it has been reviewed in a fact hearing and made the subject of an Environmental Impact Statement (EIS) under the National Environmental Policy Act of 1969. Appellee, the United States Government, has responded by questioning the ripeness of appellants' protest and by arguing that the decision to go forward with the timber sale is supported

1/ Len Richardson, Steve DiVerde, Ken E. Allison, Doreen Gold, Jay Roberts, Jeff Curran, Debra Muldoon, Debra Barmore, Richard McDonald, Barbara L. McDonald, Debra McDonald, Dorothea Wilber, Fred J. Wilber, Michael Arthur Weiss, Elaine B. Weiss, Robert B. Jones.

2/ The subject land is SE 1/4 SW 1/4 sec. 20, N 1/2 NW 1/4, SW 1/4 NW 1/4, W 1/2 SW 1/4 sec. 29, NW 1/4 NE 1/4 sec. 31, T. 33 S., R. 6 W., Willamette meridian.

by the record and was made only after adequate consideration of all environmental and economic facts. The Government asserts, furthermore, that the BLM, in formulating this sale plan, has made every reasonable effort to minimize the impact of the tree harvest by carefully engineering the log roads involved, by using the shelterwood method of cutting, and by various other measures aimed at minimizing the ecological disruption which the harvest might cause.

[1] In an order dated March 25, 1977, Lynda and Marion Turley, IBLA 77-43, a case of an appeal directly from a BLM decision to offer a certain tract of timber for sale, we stated that:

Advertisement of a tract of timber for sale does not constitute a "decision" within the meaning of 43 CFR 4.410. Advertisement of the timber does not guarantee that a purchaser will come forward or that a contract will be entered into. However, the advertisement lends itself as the subject of a protest.

The Government urges that Turley should be interpreted as requiring the appeal before us to be dismissed as premature. We find, however, that the present case falls within the distinction made in the above passage to the effect that, "the advertisement lends itself as the subject of a protest." The present appellants are, in fact, before us in the matter of the denial of their protest. Thus, the present appeal is ripe for decision and will not be dismissed as premature.

[2] One of the problems at the heart of appellants' objection to the proposed timber sale is the fact that portions of the proposed sale tract appear to be populated with very old or "virgin" trees. Indeed, the semantic differences between appellants' Statement of Reasons and appellee's answer illustrate clearly the conflicting view points which give rise to this appeal. Appellants refer to the proposed sale timber as "one of the last stands of virgin timber * * *," and as "a remnant virgin forest." The Government, on the other hand, refers to "natural forest * * * largely made up of old growth timber which is growing very slowly or may even have a negative growth rate because of old age, disease, and insect attack." Whatever one's esthetic preferences may be, it is clear that, as a legal matter, BLM's emphasis on the low growth rate and commercial maturity of this timber reflect an awareness of an unequivocal Congressional mandate to preserve forest resources from all forms of infestation and damage and to preserve timber from such ravages in the course of achieving, in perpetuity, a high level annual or regular periodic output of the various renewable resources of the public lands. To this end, BLM is authorized to cut, remove, and sell timber on the lands under its jurisdiction. ^{3/} Thus, the fact that a tract is populated with

^{3/} Act of August 28, 1937, 43 U.S.C. § 1181(e) (1976), O & C Lands. Act of July 31, 1947, as amended, 30 U.S.C. § 601 (1976), public lands.

"virgin timber" becomes a two-edged sword in that the low or negative growth rate of such timber may require that it be harvested where esthetic, recreational and other multiple use considerations do not outweigh the above-detailed mandate of Congress. (See also 43 U.S.C. § 1181(a) (1976).)

[3] In the case before us, it appears that BLM has taken considerable time and effort in reaching the decision to offer the subject timber for sale. We find, moreover, that environmental considerations have been accorded great weight in the development of the proposed sale plan, and that appropriate care has been taken to avoid interference with water sources in the area, especially the Jalbert watershed. In summary, the BLM sale proposal, which calls for a shelterwood type of cut carried out under numerous protective stipulations involving the manner of log removal, road construction, ditching, grade stabilization, etc., does not appear to threaten any legitimate interest of Jalbert or any other private party. The decision is well supported by the record and will not be disturbed in the absence of a showing that it is clearly in error. Crooks Creek Commune, 10 IBLA 243 (1973). This same principle requires us to decline to overturn BLM's classification of Malone Peak as a sale area instead of a recreational reserve, such decisions remaining within the discretion of BLM and being reversible only upon a showing of clear error.

[4] Appellants' request that an EIS be prepared prior to the sale or disposal of the timber here at issue must be denied. As this Board held in Harold P. Canady, 29 IBLA 69, 71 (1977), another case involving private objections to a BLM timber sale in the Medford, Oregon District, "to require an EIS as a precondition to every 240-acre BLM timber sale would create an intolerable administrative burden, given the fact that, in the Medford District alone, there are 900,000 acres of managed land."

BLM has prepared a draft timber management EIS for the Josephine Sustained Yield Unit in which the Malone Peak tract is situated. The proposed action is a timber management plan for the lands administered by BLM within the Josephine Sustained Yield Unit. It is noted that the allowable cut on high intensity lands within the Unit will be reduced by approximately 33 percent. The draft EIS concedes that ultimate site specificity can be gained only in an analysis of a particular proposed timber sale. Appellants' concern over the more general issues posed by BLM timber management policies may be allayed in the draft EIS. Their comments, if any, about the adequacy of the EIS are not matters within the scope of review by this Board.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur.

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

In Harold P. Canady, 29 IBLA 69, 70 (1977), a timber sale in the Roundtop Management Project was held to be a major Federal action. ^{1/} At page 71, it is indicated that project may have consisted of 240 acres. It is not necessary, however, to determine whether the cutting of the 162 acres here involved is also a major Federal action. The record indicates the final environmental impact statement for timber sales in the area under appeal, as a part of the Josephine Sustained Yield Unit, was to be issued in 1978. This being the case, the statement should of course be considered before the contract for sale is executed. I would remand the matter to the Bureau so that the appropriate review may be made as contemplated by the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4332 (1976).

Joseph W. Goss
Administrative Judge

^{1/} In Canady, the Board stated at 70:

"Judge Clarke, in his first conclusion of law, states that 'the Roundtop Management Project constitutes a major Federal action significantly affecting the quality of the human environment.' Insofar as the Roundtop Management Project is typical of a comprehensive pattern of sales throughout the Josephine sustained yield unit, we agree with this finding. We do not, however, believe that this finding compels the conclusion that BLM must therefore prepare a separate Environmental Impact Statement (EIS) for the Roundtop project before that project is finalized. We anticipate, rather, that a unit-wide EIS will be the most appropriate action in this situation."

